

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

ESPIRIDION MARTINEZ-CORTEZ,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

Criminal No. 07-CR-2318-L  
Civil No. 08-CV-2112-L

**ORDER DISMISSING WITH  
PREJUDICE PETITIONER'S  
MOTION UNDER 28 U.S.C. § 2255  
TO VACATE, SET ASIDE OR  
CORRECT SENTENCE**

On November 14, 2008, Petitioner Espiridion Martinez-Cortez ("Petitioner") filed a motion pursuant to 28 U.S.C. § 2255 to vacate, set aside or correct sentence. Petitioner essentially requests that this Court grant a downward departure of up to two points due to Petitioner's immigration removal status. The Court has reviewed the record in this case, which clearly establishes that on September 6, 2007, Petitioner waived both his right to appeal and to collaterally attack his conviction and sentence. Plea Agreement ¶ 12. Petitioner's motion raises no challenge to the validity of that waiver, therefore this Court lacks jurisdiction to consider any collateral challenge to his conviction and sentence. *See Washington v. Lampert*, 422 F.3d 864, 869-70 (9th Cir. 2005) (recognizing that if sentencing agreement's waiver of the right to file a federal habeas petition was valid, district court lacked jurisdiction to hear the case).

Accordingly, Petitioner's Motion to Vacate, Set Aside or Correct Sentence pursuant to 28 U.S.C. § 2255 is **DISMISSED WITH PREJUDICE**.

**IT IS SO ORDERED.**

DATED: November 20, 2008

  
M. James Lorenz  
United States District Court Judge

COPIES TO:

PETITIONER  
U.S. ATTORNEY'S OFFICE